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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, on her mission to Chile

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, on her mission to Chile from 20 to 28 April 2017 pursuant to Human Rights Council resolution 34/9.

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, on her mission to Chile*

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* Circulated in the language of submission and Spanish only

I. Introduction

1. The Special Rapporteur on the right to housing, Leilani Farha, visited Chile from 20 to 28 April 2017, at the invitation of the Government. The purpose of her visit was to examine the realization of the right to adequate housing through legislation, policies and programmes and to identify positive outcomes and the remaining challenges at the national and regional levels.

2. The Special Rapporteur had the opportunity to visit different cities and regions in Chile, including Santiago, Valparaiso, Viña del Mar, Temuco and Antofagasta, and to witness the varying and contrasting realities of those cities. Thanks to the efforts of civil society, she was also able to hear testimonies and obtain information from Arica, Iquique and Calama.

3. She is grateful for the high degree of cooperation and engagement from the national Government and from the regional governments and municipalities with whose representatives she met.[1] The Special Rapporteur wishes to thank civil society and community-based organizations, as well as lawyers and academics for their contributions and insights. In particular, she expresses her gratitude to the many residents who invited her into their homes and shared their experiences, concerns and testimonies.

4. The population of Chile is estimated to be just under 17.4 million (2017 census estimates). It is a highly urbanized country, with over 87 per cent of the population living in urban centres, especially in the Santiago metropolitan area, which has approximately 7 million residents.

5. Chile joined the Organization for Economic Cooperation and Development (OECD) in 2010 as the first country in Latin America to do so, in recognition of what was considered to be solid economic management over decades. Currently, its gross domestic product (GDP) per capita stands at $23,478 (2016),[2] one of the highest in the region.[3] Equally high and the second highest of the OECD countries, is its Gini coefficient at 0.45 (2015), reflecting the pervasive inequality experienced in the country.

6. While Chile has made progress in reducing income inequalities, it remains a serious concern. The incomes of the richest are still more than 25 times those of the poorest.[4] In a recent comparative analysis of the distribution of household disposable income and poverty, OECD found that in Chile the top 20 per cent of the population had a share of total income of 52.9 per cent, compared to only 4.9 per cent for the bottom 20 per cent of the population, or in other words, around 10 times lower. Furthermore, the bottom 20 per cent of the population of Chile received the lowest average share of total income of the OECD countries.[5] Other studies, based on official data, estimate that the income of the top 1 per cent of the population is much higher, closer to 40 per cent higher than that of 81 per cent

[1] She met with the Minister for Housing and Urbanism and senior officials of the Ministry, the Minister for Social Development and senior officials of the Ministry, including the Director of the National Disabilities Service, the Minister for Women and Gender Equity and the Under-Secretary for Human Rights. She also met with members of the Senate Committee for Housing and Urbanism; the President of the Supreme Court, the Director of the National Statistics Institution; the Director of the National Emergencies Office; the *intendentes* (regional authorities) of the Valparaiso, Araucania and Antofagasta regions; the Mayors of Viña del Mar and Valparaiso; and the Association of Municipalities with Mapuche Mayors in Araucania. Meetings were also held with representatives of the National Institute for Human Rights, the Director of the Chilean Chamber of Construction, the United Nations Resident Coordinator and members of the United Nations country team and of the regional office for South America of the Office of the United Nations High Commissioner for Human Rights.

[2] OECD, selected indicators Chile: https://data.oecd.org/chile.htm.

[3] IMF report on article IV consultation, December 2016, p. 21. Despite slower growth since 2014, Chile continues to grow well above the average for the six largest economies in Latin America.

[4] OECD, income inequality update, November 2016, available from www.oecd.org/social/OECD2016-Income-Inequality-Update.pdf.

[5] Ibid.

of the population, and makes Chile one of the top five countries with the greatest inequality gap between rich and poor in the world, according to comparable data.[6]

7. With respect to poverty, Chile has developed an innovative measurement to capture more than just income poverty. This "multidimensional" poverty measure gives weight to several indicators of poverty, including in relation to housing conditions (habitability, access to water and sanitation, and the surrounding environment) and social cohesion and networks.[7] According to that measure, it is estimated that in 2015 over 3.5 million people or 20.9 per cent of the population was poor. The figure is much higher in rural areas (35.2 per cent) as compared to urban areas (18.8 per cent).[8]

8. Using the more traditional measure of poverty by income, to the country's credit there has been a substantial decrease in poverty rates, falling from 12.6 per cent of the population living in extreme poverty and 16.5 per cent in "not extreme" poverty in 2006, to 3.5 per cent and 8.1 per cent respectively in 2015, just nine years later.[9] In 2015, poverty rates remained higher in rural areas, with 22 per cent of those living in rural areas experiencing poverty, which is more than twice as high as those living in urban centres.[10]

9. The country is highly centralized, even though it is vast and with multiple regions and cultures. Effective measures and responses to its housing challenges require both an urban and a rural approach, and recognition of the differences across its geography and of its diversity.

II. Institutional and legal framework

10. Chile has ratified all the core international and regional human rights treaties. Central to the protection and realization of the rights to adequate housing and to non-discrimination are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and the International Convention on the Rights of Migrant Workers and Members of Their Families. Similarly, at the regional level, Chile has ratified the American Convention on Human Rights and has signed its Additional Protocol in the Area of Economic, Social and Cultural Rights.

11. Two key features for the realization of the right to adequate housing, and all other economic, social and cultural rights under international human rights law, are progressive realization and the use of the maximum of available resources.[11] In the Special Rapporteur's view, a combination of policies, legislation and financial subsidies are indicators of the meaningful implementation by the Government of its obligations. Since the return to democracy, Chile has indeed made considerable progress in the provision of housing and the regularization of informal settlements. Nonetheless, in the light of growing inequality, it would appear that the maximum available resources are not being applied in an effective manner.

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[6] See Ramón López, Eugenio Figueroa B. and Pablo Gutiérrez C., "*La parte del león: nuevas estimaciones de la participación de los ricos en el ingreso de Chile*", University of Chile (2013), p. 5. Available at www.econ.uchile.cl/uploads/publicacion/306018fadb3ac79952bf1395a555a90a86633790.pdf.

[7] See Ministry of Social Development, Social Development Report 2016, p. 11. Available at www.ministeriodesarrollosocial.gob.cl/pdf/upload/Informe_de_Desarrollo_Social_2016.pdf.

[8] Ibid, table 2.1, and pp. 12 and 13.

[9] The Government of Chile uses "extreme" and "not extreme" poverty in its official documents. Ibid, fig. 2.3, p. 14.

[10] Ibid, p. 15.

[11] See International Covenant on Economic, Social and Cultural Rights, article 2 (1) and Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 14.

12. The Constitution entered into force in 1980, during the Pinochet dictatorship. It has been partially amended 39 times since the return to democracy, in order to protect democratic institutions, including important changes that were made to it in 2005. The Special Rapporteur heard views expressed by the authorities and human rights and housing experts that it remains a text that does not adequately encompass contemporary human rights issues.

13. Despite the amendments, the Constitution still does not explicitly recognize the right to adequate housing. In addition, the constitutional protection action provided for in article 20, does not include all economic, social and cultural rights and hence they are not justiciable in courts. The Constitution includes some provisions that could be used to secure aspects of the right to housing: article 5.2, for example, recognizes that all organs of the State have a duty to respect and promote all rights guaranteed in the Constitution as well as those that are part of the international treaties in force in Chile. In 2004, the Committee on Economic, Social and Cultural Rights expressed concern that the right to housing was not considered justiciable in Chile, a situation that has not changed (see E/C.12/1/Add.105, para. 12).

14. Another limitation is that the Constitution incorporates the principles of equality and gender inequality at articles 1 and 19, but discrimination itself is not mentioned. In 2012, a law against discrimination, known as the Ley Zamudio, was adopted.[12] The law protects against "arbitrary" discrimination, defined as any distinction, exclusion or restriction that lacks a reasonable justification, either by State agents or private persons, and includes a broad list of grounds of discrimination.

15. In October 2015, the Government initiated a process of consultations with individuals over 14 years of age, including migrants possessing an official identity card and indigenous peoples, aimed at preparing the basis for a new constitution.[13] In January 2017, a report entitled Citizen Bases was presented to the President, summarizing the main areas that were identified for a new constitution.[14] The right to decent housing was one of the aspirational issues that was clearly recognized. Similarly, indigenous peoples identified the need for guaranteed access to quality housing, ensuring habitability, security of tenure and ownership of their lands, and the recovery of their ancestral lands.[15] Some of the Special Rapporteur's interlocutors noted, however, that a truly intercultural approach ensuring the participation of migrants, for example, had not been achieved.

16. In a parallel development, in July 2017, a member of parliament tabled an amendment to the existing Constitution requiring the inclusion of a reference to the right to dignified housing in article 19. The text suggested would require the State to establish the necessary conditions for the effective realization of that right and put in place public policies to allow all citizens equal access to housing.[16]

17. With regard to other international standards, the Special Rapporteur welcomes the commitment of Chile to the implementation of the 2030 Agenda for Sustainable Development and appreciates that it is one of the first countries in the world to have presented a voluntary report with a particular focus on poverty.[17]

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[12] Law against Discrimination, No. 20.609, 24 July 2012, available at www.leychile.cl/Navegar?idNorma=1042092.

[13] See www.gob.cl/consulta-linea-una-manera-sencilla-participar-del-proceso-constituyente/. See also OECD public governance review, "Chile. Scan report on the citizen participation in the constitutional process" (2017), p. 6, available at www.oecd.org/gov/public-governance-review-chile-2017.pdf.

[14] OECD, "Chile. Scan report on the citizen participation in the constitutional process", pp. 15 and 30. For the full report, see www.unaconstitucionparachile.cl/.

[15] See www.constituyenteindigena.cl/wp-content/uploads/2017/05/Sistematizacion_Proceso_PCI.pdf, p. 107.

[16] Chamber of Deputies, bulletin No. 11333-07, 20 July, 2017, available from http://web.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=11849&prmBOLETIN=11333-07.

[17] See https://sustainabledevelopment.un.org/content/documents/15776Chile.pdf.

III. Right to adequate housing

18. The results that Chile has achieved in the housing sector in recent decades cannot be overemphasized. Since 1990, the Government has invested billions of dollars in the housing supply. In recent years, it has also aimed to tackle other critical issues, such as exclusion, including through the social inclusion agenda 2014–2018. Chile has successfully managed to address a significant portion of its quantitative housing deficit, and to some extent also its qualitative deficit, and has put in place programmes to diversify tenure systems. Official figures pointed to a housing deficit of between 900,000 and 1 million units in 1990. The policy response prioritized quantity, or in other words the delivery of housing units to the population in the lower- and middle-income groups. Programmes targeting subsidies for property acquisition or construction were central to the effort and peaked in 2009.[18] In 2010, the Government introduced subsidies for reconstruction and maintenance, shifting a part of public funding towards addressing the qualitative deficit. A total of 5.9 million new housing units were built and Chile now boasts a 64 per cent homeownership rate. That progress is one of the most significant examples in the region in terms of advances in housing provision. Nevertheless, there remains a quantitative deficit of over 390,000 units[19] and a qualitative deficit of over 1.2 million houses in need of improvement and maintenance (88.2 per cent), expansion (20 per cent) and access to sanitation (19.9 per cent).[20]

19. The quantitative approach has resulted in positive change, with large segments of the population becoming homeowners with security of tenure that can be passed on to their children. However, two negative results have emerged: (a) given the low quality of the construction, particularly in the 1990s, the guarantee of tenure has become obsolete; since 2005 it has led to evictions and the demolition of social housing buildings, which were in a dilapidated condition;[21] (b) it has had deleterious qualitative results for many and it has created a trap as people living in poverty focused their hopes on accessing subsidies which would ensure them a house in the most basic sense, but which often fell short of realizing their right to adequate housing. The Government has acknowledged that having a place on the outskirts of cities, without adequate transportation, jobs and of very low quality plays a role in the creation of circles of poverty and isolation. Both of those negative outcomes have been part of the assessment of the situations by the Government, especially since 2014 when the Solidarity Fund for the selection of housing was substantially revamped, and have been taken into account in the design of longer-term policies and programmes.

20. The Special Rapporteur recognizes that some positive steps have been taken towards addressing social and spatial segregation, notably the programme for social and territorial integration, with the objective of developing 25,000 new housing units to ensure a combination of four key factors: (a) location in urban areas with services and infrastructure; (b) social integration, by ensuring households with different income levels are part of the same project; (c) focalized in cities with higher housing deficits and needs; and (d) a high quality of construction and urban services.

21. One cannot assess the housing situation in Chile without due consideration of its history. The Special Rapporteur has identified three central characteristics that define the housing system and that are linked to the historical context: (a) the lingering validity of housing-related decisions and regulations from the Pinochet era, adopted and implemented

[18] See http://habitat3.org/wp-content/uploads/CHILE_INFORME_NACIONAL_HABITAT_III.pdf, p. 13.

[19] The vast majority of the deficit relates to *allegados* (relatives or family friends living together in overcrowded conditions). Children and adolescents are often part of such households and 13.9 per cent of families with children and adolescents are currently living in overcrowded conditions.

[20] Ministry of Housing and Urbanism, "*Vivienda adecuada y asequible, aprendizajes de la política habitacional chilena*" (January 2017), PowerPoint presentation made available to the Special Rapporteur.

[21] See, for example, Villa Francisco Coloane case study, in Alfredo Rodriguez, Paola Rodriguez and Ana Sugranyes, eds., *Con Subsidio, Sin Derecho: La Situación del Derecho a una Vivienda Adecuada en Chile*, (Santiago, Ediciones Sur, 2015), pp. 77–94.

without the involvement of the parliament, which has resulted in laws that have not been subject to rigorous debate and analysis; (b) the ubiquity of the private market, with a bias toward homeownership over other tenure regimes for decades; and (c) the resultant geographic segregation of the population based on socioeconomic status, with the poorest living on the outskirts of cities or in precarious conditions. As is discussed in the present report, those characteristics are not accidental.

22. An illustration of the first point was decree D.S. No. 105 of 1 April 1980, which established that anyone who illegitimately occupied property (whether owned by the central or a municipal government or other government institutions, a public or private entity or an individual) was disqualified from accessing social housing, or sanitation infrastructure, nor could that person apply for a central government housing allocation through the housing and urbanization services of the Ministry of Housing and Urbanism, or access a housing subsidy or other assistance from any housing system operated by the central government or the municipalities. The Special Rapporteur is pleased to note that this decree has recently been repealed. Among the arguments made for the repeal, it was noted that occupying housing units or other property represented a spontaneous response to the extreme precariousness in the living conditions of those who took such action.

23. Chile is known as one of the most financialized and privatized economies in Latin America. That can be traced back to the introduction of free-market neoliberalism, during the military dictatorship (1973–1990), with a clear link to the provision of housing through market mechanisms, with the State playing a subsidiary role. The economy continues to be based on this model, particularly the construction sector, which in 2016 accounted for a sizeable 7.5 per cent of GDP devoted to public and private construction, while 4.2 per cent of the public sector budget was devoted to housing.[22]

24. Since the 1990s, the housing system, including for the lowest income groups, has been based on the role of the State as financier, whereby housing has been viewed primarily as an asset or commodity. The main actors in the housing sector are private real-estate builders, developers and financial institutions who wield a great deal of power. That model has essentially converted rights holders into consumers.

25. The current system has its origins in 1978, when a model of housing policy was introduced, whereby individuals were posited as homebuyers, were required to contribute to the cost of the house through savings and were also able to access credit. Houses were built by the private sector, while the subsidy was documented by a Government certificate. The State left aside its direct interventions in the construction and provision of housing and, as a result, the private real-estate sector became the leading actor. Furthermore, the State not only delegated to the private sector the totality of the production of housing, ensuring that public funds would be available, but also the provision of credit and mortgages.[23]

A. Public subsidies

26. The housing system in Chile is essentially a demand-based homeownership system and people in all income brackets continue to perceive homeownership as the best model. The system of subsidies works as follows: residents, including those who are poor, apply for a unit, the size, location and quality of which is based on the income level of the applicants, who pay a proportion of the cost out of personal savings (on average $400 for those in the lowest income bracket). They are usually required to form an association and are added to waiting lists prior to having access to social housing. The Government then covers the difference in the form of a subsidy, which represents as much as 95 per cent of the total cost of the unit. Middle-class applicants require larger savings and a mortgage to help finance the cost of the unit and the State pays a smaller subsidy. In both cases, the subsidy goes directly to the builder. Private builders are contracted to build the units. Once

[22] Ministry of Housing and Urbanism, "*Vivienda adecuada y asequible, aprendizajes de la política habitacional chilena*".

[23] See Claudia Chamorro D., "*Política habitacional en Chile: historia, resultados y desafíos*", working paper No. 72, Chilean Chamber of Construction, (2013).

granted a unit, residents in vulnerable groups make no further payments beyond utilities and become owners with security of tenure. It must be noted, nonetheless, that the poor quality of the housing and the lack of maintenance has led to demolitions, rendering people vulnerable to eviction despite their tenure status.[24]

27. To maximize profits, private sector builders choose to buy the cheapest land on which to build. They also define the quality of the construction according to the characteristics of the neighbourhood or district in which they will obtain construction permits. For low-income social housing projects, which tend to be outside the city centres, they often use materials of poor quality. That has resulted in the segregation of poor people, sending them to the outskirts of cities, living in the poorest quality housing, dislocating them from their communities, their places of employment and their identities as city-dwellers.

28. Within cities, the drive for profitability has resulted in poor quality, excessively high-density high-rise buildings to maximize square footage profits. "Vertical ghettoes", as they have been described, house thousands of tenants in one massive structure and represent unregulated and poor urban and social planning, and potential safety risks.

29. The reasons behind this type of construction can be explained by the links between private profit and public subsidies. In order to make profits from government subsidies, construction companies play with two variables. The first is to construct many units for low-income families, to maximize the number of subsidies it receives. The other critical variable is the use of "cheap" land, to minimize output costs. In recent years, construction companies have been required to use better-quality materials and have therefore tried to save costs by using cheaper land. The institutional structure of the subsidy programmes constitutes an incentive for segregation, because it continues to promote density of subsidized housing built on cheap land, usually located at the periphery of cities and without services or employment opportunities.[25]

30. It is not surprising that the Special Rapporteur heard that housing subsidies have contributed to the deep stigmatization of people living in poverty. She was told by many, including by government officials, that those with wealth do not want to live beside those who are poor. The long-lasting impact of housing-based stigma and discrimination follows a person in many situations: several people with whom the Special Rapporteur held discussions noted that the place/location where they grew up or where they were currently residing was a source of discrimination in gaining employment and in other social interactions.

31. In recent years, it should also be recognized that the Government has responded to some of the weaknesses of the homeownership subsidy for vulnerable groups. For example, the Special Rapporteur learned of a subsidy programme aimed at integrating poor people into prime city centre locations and a requirement that in newly constructed buildings 20 per cent of the units are reserved for social housing subsidies. She also learned of a new subsidy to promote rental accommodation as a stepping stone to homeownership. The Government has also made some effort to ensure that subsidized housing is of better quality and that larger units are made available.

B. Land issues and real estate

32. The challenges in the housing sector are as much related to land use and the lack of adequate land policies or national regulation, as they are about the other issues discussed in

[24] See cases in Alfredo Rodriguez, Paola Rodriguez and Ana Sugranyes, eds., *Con Subsidio, Sin Derecho*.

[25] See, Diego Gil McCawley, "The political fragmentation of land use governance in Santiago, Chile, and its implications for class-based segregation", *The Urban Lawyer*, vol. 47, No. 1 (2015); Raquel Rolnik, *Guerra de los Lugares: la Colonización de la Tierra y la Vivienda en la Era de las Finanzas* (Santiago, Lom Ediciones, 2017) and Alfredo Rodriguez, Paola Rodriguez and Ana Sugranyes, eds., *Con Subsidio, Sin Derecho*.

the present report. Land has been both a valuable resource to "capture" and to dispose of by powerful socioeconomic actors and an instrument of policymaking. As a result, spatial segregation, or what some would more radically call social engineering, is an entrenched reality whereby lower-income households have access to housing in the least desirable locations. Location, a core element of the right to adequate housing, determines access to several other human rights, including education, work and health. Access to services and infrastructure of good quality, another core element of the right to housing, is also determined by location.[26]

33. Inadequate urban planning and zoning have given more weight to land in terms of profit, rather than in terms of its social functions or its centrality for residential housing.[27] The complexities of land regulation go beyond the purview of the present report, however it should be noted that land regulation involves four levels of government, from district to national, and a host of legal instruments and measures, all of which makes for a cumbersome and difficult process, including when trying to develop policies to protect the right to housing for vulnerable groups.[28] Municipalities and real-estate developers use the complexities of land regulation to their advantage, often refusing to accept social housing projects in their districts to avoid a loss of tax revenues, or using specific regulations to protect the socioeconomic character of their communities.

34. Chile lacks national urban planning policy guidelines based on human rights.[29] That appears to have caused fragmentation and inconsistency in the decision-making processes about land, creating strong incentives for some local governments to prefer a concentration of high-income residents.[30] It is not therefore surprising that, despite recognition of the persistent patterns of segregation in Santiago, little has been achieved thus far. "On the contrary, it seems that [land use law] promotes the expansion of the pattern of social fragmentation that exists today", one expert has noted.[31]

35. One of the main issues underlying the situation is the scarcity of land for social housing projects in well-serviced locations. Competition for land is fierce and the playing field is unbalanced: the regulatory framework for land use was designed to facilitate real-estate development, without special incentives for municipalities to favour low-income housing. To counter that situation, the Special Rapporteur notes the importance of using zoning ordinances or urban planning instruments with the clear purpose of favouring the generation of affordable housing and social integration in line with human rights obligations. Various recent amendments to the General Law on Urbanism and Construction include a provision that allows municipalities to provide zoning incentives for projects that benefit social integration.[32] New or revised legislation on land, for example, to address transparency in the land market, was under consideration at the time of the preparation of the present report.[33]

36. During her visit to the Cerro Barón quarter in Valparaiso, the Special Rapporteur met with residents of a waterfront community that is currently fighting a luxury condominium development. A landmark hospital was irregularly demolished to make way

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[26] For details of the core elements of the right, see Committee on Economic, Social and Cultural Rights, general comment No. 4.

[27] See Diego Gil McCawley, "The political fragmentation of land use governance in Santiago".

[28] See, for example, figure 1 in Diego Gil McCawley, "The political fragmentation of land use governance in Santiago", summarizing the regulatory powers, public institutions and political dependencies involved.

[29] See Diego Gil McCawley, "The political fragmentation of land use governance in Santiago". According to information from the Interministerial Commission on City, Housing and Territory, only 34 per cent of the districts in the country had regulatory community plans in force in 2015, while 41 per cent were under revision and amendment. In her visit, the Special Rapporteur was informed of government plans to develop a national policy of territorial organization, still not finalized.

[30] See Diego Gil McCawley, "The political fragmentation of land use governance in Santiago".

[31] Ibid.

[32] General Law on Urbanism and Construction, Law No. 21014, 26 May 2017.

[33] See Chamber of Deputies, bulletin No. 10163-14, 30 June 2015, available from www.camara.cl/pley/pley_detalle.aspx?prmID=10582.

for the project and residents in the vicinity have suffered damage to their homes as a result. The Special Rapporteur was told by the development agent that the smallest unit in the complex intended for construction would sell for $150,000, completely unaffordable for most people in Valparaiso, a city with a high poverty rate. The units are attracting wealthy people from Santiago as secondary residences.

37. In September 2017, the Mayor of Valparaiso cancelled the construction permit of a number of real-estate projects. For example, in Parque Pümpin, where 22 buildings were to be built, according to decree No. 1619, the permit was cancelled owing to lack of compliance with existing municipal norms and alterations made between the draft and final projects.[34] Developers have argued that the mayor's decision is against the rule of law and is not in compliance with the powers of the municipality, and have threatened judicial action.[35]

38. In several cities, real estate appears to be profiting from a lack of consistent regulations on land use. In some cases, builders have been given permits to erect skyscrapers or luxury apartment complexes without any height or density restrictions, without consultation with local residents and without consideration for the needs or character of the community.

39. The Special Rapporteur notes the recent launch of the national plan of action on business and human rights, but regrets that regulation of real-estate developers under the Guiding Principles on Business and Human Rights is not part of it.[36]

C. Homelessness

40. The Special Rapporteur is concerned by the visibility of street homelessness in Chile and its relative invisibility in terms of housing and social development policy.

41. There are insufficient national statistics regarding the number of homeless persons, although steps have been taken in this regard. Registers of homeless people were prepared in 2005 and 2011. In 2016, the Ministry of Social Development decided to create the first registry of homeless people. In its first phase (August 2016 to August 2017), 10,610 homeless persons were registered and will be assured access to social services. The establishment of a registry as a basis for a new public policy allows government officials to better understand the needs of this population group, with a view to guiding the design and implementation of public policies targeting homeless people as a priority within the scope of programmes delivered through the Social Registry of Households.[37]

42. Of the total of homeless persons registered, 85 per cent are men and 15 per cent are women. The majority of people registered as homeless are Chilean nationals and live in the Santiago metropolitan region (43.9 per cent), followed by the Valparaiso region (11.9 per cent) and Bío Bío region (9 per cent). Almost all homeless individuals are single (95.5 per cent).[38]

43. The Special Rapporteur recognizes that such a registry signals progress and must be sustained over time to ensure that the entire population in need can be adequately registered and tracked. She considers that better knowledge and understanding of the lived experiences and specific needs of homeless people are essential to moving towards effective policies aimed at the elimination of homelessness. However, she emphasizes that the official figures seem to still be much lower than what in fact must be the case and do not reflect the status of migrants or non-nationals with respect to homelessness. Further, the

[34] Municipal decree No. 1619, available at www.leychile.cl/Navegar?idNorma=1104942.

[35] See www.soychile.cl/Valparaiso/Sociedad/2017/09/24/489011/Inmobiliaria-acuso-a-Sharp-de-actuar-contra-Estado-de-Derecho-en-Valparaiso.aspx.

[36] See www.minrel.gob.cl/canciller-munoz-presenta-plan-de-accion-nacional-de-derechos-humanos-y/minrel/2017-08-21/145507.html.

[37] See www.registrosocial.gob.cl/public_noticas/registro-social-calle-ha-identificado-10-610-personas-en-situacion-calle-a-agosto-de-2017/.

[38] Ibid.

Rapporteur notes that in order to be human rights-compliant, the structural causes of homelessness need to be thoroughly researched by the Government and a national policy or strategy to prevent, address and eliminate homelessness must be put in place.

44. Deeply concerning is a recent measure for regulating the use of public spaces proposed by the Mayor of Antofagasta, to fine any individual living in the street, who would be obliged to pay as much as 250,000 Chilean pesos (approximately $390).[39] Civil society groups have noted that the measure may be impossible to implement in practice and may also violate constitutional rights. The Special Rapporteur notes that this measure criminalizes homeless persons, is discriminatory and is not in compliance with international human rights law, which the local government has the obligation to observe.

D. Informal settlements or *campamentos*

45. The Government of Chile has made progress with regard to informal settlements since the 1990s, and can be commended for its achievements. The number of informal settlements is not as high in Chile as in other countries in the region. The Government has made use of mechanisms such as relocation, urbanization in situ and *radicación* (in situ development of housing alternatives) to cope with informal settlements. However, this remarkable progress should not lead to complacency.

46. According to recent data from the non-governmental organization Techo, there has been an increase in the number of informal settlements in the country, from 660 in 2016 to 702 in 2017, where approximately 40,500 families, or 162,000 people, reside.[40] *Campamentos* as informal settlements are known, are present in most regions in Chile. In 2017, over 10,000 families lived in *campamentos* in the Valparaiso region, and nearly 7,000 in Antofagasta, a region that has experienced an increase of 400 per cent in such settlements in the last six years.

47. The number of people living in *campamentos* is always in flux and may be the result of various factors, including the impact of natural disasters, lack of employment, internal and international migration and urbanization. The number of families living in such settlements in Chile has increased by 41 per cent since 2011. Between 2016 and 2017, while 2,901 moved out of an informal settlement, as many as 4,672 families joined one. Such settlements are started technically as "occupation" of publicly or privately owned land by a group of households (currently eight or more households define a *campamento* as such). Those living in informal settlements are the poorest and most vulnerable.[41] Reportedly, regularization of such settlements, when possible, can take from 5 to 15 years.

48. Many *campamentos*, especially in the northern and Valparaiso regions, are made up of migrants who have nowhere else to live in the light of the restrictions they face on receiving housing subsidies until they have become permanent residents. For example, in Antofagasta, 80 per cent of the population of one *campamento* the Special Rapporteur visited were migrants.

49. Beyond migrants, many people residing in such settlements originally applied for subsidized housing, but owing to lengthy waiting times or the inadequate location and very poor quality of such units, decided they would be better off living informally and closer to their places of employment.

50. The living conditions in many of the settlements are characterized by a lack of security of tenure, overcrowding and a lack of basic utilities, including drinking water. A recent study showed that 15 per cent of residents of *campamentos* live in areas of socio-natural risks, old landfill sites, contaminated areas and areas associated with floods and

[39] See, for example, www.publimetro.cl/cl/noticias/2017/10/29/antofagasta-pretende-cobrar-multas-las-personas-situacion-calle-monto-llegara-250-mil.html.

[40] See http://chile.techo.org/cis/monitor/#. Government figures from the 2011 cadastre show 657 settlements housing 31,158 families.

[41] Ibid.

forest fires.[42] Residents told the Special Rapporteur that they were not granted an official address and as such were precluded from obtaining many social benefits.

51. The Special Rapporteur was pleased to learn that informal settlements on public land are generally not subject to forced evictions. A protocol for evictions was adopted in March 2017, which incorporates some international standards, including dissemination of information for all members of a community prior to eviction; special attention to be paid to individuals in a situation of vulnerability, such as children, older persons and persons with disabilities; and mapping of all families who may be impacted by the eviction in order to identify alternative accommodation.

52. That being said, evictions do occur, especially from private land that has been occupied. The Special Rapporteur has been informed that the existing regulations and procedures for carrying out an eviction are far from compliant with the relevant international standards. If an eviction order complies with legal requirements, the eviction can be carried out and the State is not obliged to ensure alternative accommodation is available or comply with other international human rights obligations. Since the right to property, public or private, is well-protected, there are several judicial tools available for filing for eviction. The most commonly used is based on article 2195 of the Civil Code and the courts will often rule in favour of the owner of the land and, if deemed necessary, provide police assistance to execute the decision.

53. Some evictions are carried out with excessive use of force by the police, use of bulldozers or lack of prior warning. For illustration, the Special Rapporteur received information about the forced eviction from private land of approximately 300 people in Iquique in August 2016. The testimonies reflected the trauma experienced by residents of the community, who were left without water, electricity, sewage or housing options. Furthermore, threats of a second eviction seemed to be looming for the community, without any clarity as to where they would be relocated. Other evictions brought to the attention of the Special Rapporteur included one in Colina in June 2017 and one in Viña del Mar in October 2017.[43]

E. Post-disaster response and reconstruction

54. There is a clear understanding and awareness of the magnitude of natural disasters in Chile owing to its exposure, on a regular basis, to earthquakes, land- and mudslides, volcanic eruptions, fires, floods and tsunamis.

55. In their discussions with the Special Rapporteur, the Government and the population often referred to the importance of effective risk assessments and planning and the need for rapid response and mechanisms to ensure that emergency shelters and temporary housing would be available and would cater for the most essential needs, especially of the most vulnerable.

56. The 2010 earthquake, its magnitude and huge impact on several regions where around 80 per cent of the population of the country live, is still fresh in the memory of many people.[44] Several lessons learnt from that process were outlined for the Special Rapporteur, including the recognition that emergency shelters, originally conceived to last for a few weeks, can end up becoming more permanent and must be planned as good quality transition housing, potentially to be used for years.

57. However, in some cases, such as Villa Futuro (Concepción) or in Talca Downtown, the delegation of reconstruction to the private sector has also led to the displacement of some towards the outskirts of cities, while the more centrally located land has been rendered profitable for other purposes.[45] Part of this was the result of programmes set up by

[42] Ibid.

[43] See www.biobiochile.cl/noticias/nacional/region-de-valparaiso/2017/10/12/desalojan-toma-en-sector-miraflores-alto-de-vina-del-mar-tras-ocupacion-de-4-meses.shtml.

[44] The regions are Valparaiso, Metropolitana, O'Higgins, Maule, Biobio and Araucania.

[45] See Alfredo Rodriguez, Paola Rodriguez and Ana Sugranyes, eds., *Con Subsidio, Sin Derecho*.

the Ministry of Housing and Urbanism in the aftermath of the 2010 earthquake such as "Construction in new plots", which essentially meant that people who had lived in central locations were displaced.

IV. Discrimination, segregation and social exclusion

A. Urban poor

58. In 2015, the Committee on Economic, Social and Cultural Rights underlined its concerns about the protection, respect and realization of the right to housing in Chile, noting that despite the measures taken to reduce housing deficit, the country needed to focus on a comprehensive strategy on social housing that would be human rights-based (E/C.12/CHL/CO/4).

59. At the heart of the Committee's concerns, which are shared by the Special Rapporteur, is the fact that while many of the 3.5 million people (20 per cent of the country's population) considered poor in Chile have access to housing subsidies, they continue to live in dire conditions with very limited opportunities to escape from poverty. That figure is shocking for a country with the economic capacity of Chile. Many of the people facing poverty in urban centres are women (with children), often with jobs that do not cover the high cost of living, or older persons for whom current pensions are insufficient. The urban poor may also experience difficulties in paying their rents, have limited financial capacity to do any repairs to or maintenance of their homes, or suffer the negative impacts of the high prices of utilities and transportation.[46]

60. The Special Rapporteur was in fact confronted with a fairly uncommon situation: high levels of poverty and inadequate conditions of living among those who have security of tenure and a roof over their heads. Limited social mobility, a lack of interaction across socioeconomic divides and the persistence of socioeconomic spatial segregation have consequences that last for generations.

B. Migrants

61. The most relevant social dynamic in Chile in recent years has been the influx of migrants from the region, notably from Argentina, the Plurinational State of Bolivia, Colombia, Haiti, Peru and the Bolivarian Republic of Venezuela. Chile has become a destination for people escaping from economic hardship or seeking refuge from violence or political crisis. In 10 years, it has experienced an estimated 200 per cent increase in immigration.[47] According to the national social and economic survey in 2015, foreign residents in Chile went from 154,000 in 2006 to 465,000 in 201[48] Over 51 per cent are women and over 34 per cent are between 30 and 44 years old. Migrants experience higher levels of multidimensional poverty than the average, at 23 per cent nationally and as high as 35 per cent in the northern regions.

62. International obligations with regard to migrants are binding for Chile as a party to the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In fact, article 7 of the Convention explicitly guarantees the right to non-discrimination on any ground, while article 43 (1) (d) guarantees equality of treatment with nationals of the State of employment in relation to, inter alia, "access to housing, including

[46] See also the report of the Special Rapporteur on extreme poverty and human rights on his visit to Chile in 2015, A/HRC/32/31/Add.1.

[47] David Sirlopu and Jan Pieter van Oudenhoven, "Is multiculturalism a viable path in Chile? Intergroup and acculturative perspectives on Chilean society and Peruvian immigrants", *International Journal of Intercultural Relations*, vol. 37, No. 6 (November 2013).

[48] Ministry of Social Development, national survey on socioeconomic characterization, available from http://observatorio.ministeriodesarrollosocial.gob.cl/casen-multidimensional/casen/casen_2015.php.

social housing schemes and protection against exploitation in respect to rents". The Committee on Economic, Social and Cultural Rights has noted that the rights in the Covenant, such as the right to adequate housing, apply to "everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation".[49]

63. The Special Rapporteur heard disheartening testimonies about and saw at first-hand the housing conditions of migrants. Many referred to having experienced various forms of discrimination in the housing sector. Migrants cannot apply for the housing subsidy programme until they have resided in Chile for at best two years and at worst five years, and have become permanent residents. That leaves them no option but to rent in the private market or reside in *campamentos* or on/in occupied land/buildings. The Special Rapporteur visited a site in Santiago that migrants had occupied. Beyond lacking any security of tenure, it was not fit for living, with sewage backing up into the residence and other health and safety concerns. Stigma and discrimination in the private rental market is rampant, a critical fact, considering that just over 72 per cent of migrants in Chile in 2015 were renting.[50] Migrants recounted being denied accommodation because of their place of origin, or exploited in the private housing market by landlords who overcharged or who offered costly but precarious living conditions. Even within *campamentos*, some migrants noted that they had experienced intercultural violence and hostility.

64. Women migrants have a particularly difficult time, especially when they are perceived as not "attached" to a man. Sexual harassment and stigma are also part of the lived experience. Employment opportunities are scarce, which means renting an apartment is almost impossible. Within *campamentos*, migrant women often experience violence.

65. The Government presented a draft law on migration in August 2017.[51] The draft includes provisions regarding equality and non-discrimination (art. 11) and other articles address economic and social rights such as health, education and work. Surprisingly, the draft lacks any reference to the right to adequate housing and it fails to mention the International Covenant on Economic, Social and Cultural Rights as a relevant instrument.

66. One major concern about the draft law is its overall punitive approach to migration and an emphasis on "public safety" (similar to an aliens act) rather than as an opportunity to develop a vision of migration anchored in human rights, aimed at a society that is multicultural and diverse. While some have noted that the law, if adopted in its current form, would provide better protection for children, victims of trafficking and asylum seekers than is currently the case, the emphasis placed on a sanctions-oriented regime for the irregular movement of people may have deleterious effects for some of the most vulnerable individuals. Moreover, the draft fails to make special provisions based on gender, despite the particular impact of migration on women and the fact that the majority of migrants in Chile are women.

67. Some concerns have also been raised about the potential for the criminalization of irregular migration and excessive administrative procedures, some of which could possibly have a direct impact on access to housing, services and subsidies.[52] In fact, the proposed law would be regressive with regard to the existing administrative mechanisms already in place and functioning, such as access to subsidies for older persons.

68. In September 2017, 40 families (approximately 90 persons) were evicted from a building in Santiago, which was the property of the municipality, after an agreement had been reached with the authorities.[53] The building had been occupied by both nationals and

[49] General comment no. 20 (2009) on non-discrimination in Economic, Social and Cultural Rights, para. 30. See also Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non-citizens.

[50] National social and economic survey, 2015.

[51] Available at www.camara.cl/pley/pdfpley.aspx?prmID=11700&prmTIPO=INICIATIVA.

[52] Declaration by the Red Nacional de Organizaciones Migrantes y Promigrantes (National Network of Migrants' and Promigrant Organizations) on the draft law on migration.

[53] See www.biobiochile.cl/noticias/nacional/region-metropolitana/2017/09/26/municipio-de-santiago-concreto-desalojo-de-extranjeros-para-construir-viviendas-sociales.shtml.

migrant families for over two years but the municipality had designated the land for development. The municipality ensured that 58 social housing units would be constructed on the site, which would be distributed between three housing associations that had been on the waiting list for years. The families agreed to relocate voluntarily and received a subsidy for rental in different locations in the city, and the eviction was carried out with the National Institute for Human Rights as observer.[54] The Special Rapporteur has learned that once the project is completed those who were forced to leave will not necessarily be able to return to live in the new units. She has also learned that as many as 26 similar evictions of communities where migrants live are planned for Santiago.

C. Indigenous peoples

69. In 2015, the Special Rapporteur on extreme poverty and human rights stated that the "rights of indigenous peoples are the Achilles' heel of the human rights record of Chile in the twenty-first century" (see A/HRC/32/31/Add.1, para. 52). The Special Rapporteur laments the fact that she must agree with that assessment. Chile continues to lag behind the region in its recognition of its intercultural characteristics. Indigenous people, who are almost twice as likely to be poorer than the average in Chile, face lower housing standards as a result of long-standing discriminatory policies and practices, the dispossession of their lands and the lack of a rights-based indigenous policy that would begin to address their experiences of inequality.

70. The Committee on Economic, Social and Cultural Rights has also recommended that the necessary measures be taken to ensure free, prior and informed consent for indigenous peoples in relation to their rights under the Covenant, such as housing, and to increase efforts to guarantee the disposal of their lands, territories and natural resources, with legal recognition and protections (E/C.12/CHL/CO/4).

71. The Special Rapporteur heard several testimonies and information exposing the plight of indigenous people living in housing that is overcrowded, with precarious tenure, and a lack of access to water. The underlying and overt exchanges with the authorities and with other sectors of the population are often carried out under the umbrella of discrimination and stigma.

72. The Special Rapporteur visited what used to be Vertedero Boyeco in Temuco where a massive garbage dump that had operated since 1992 was located on land traditionally occupied and in the vicinity of several Mapuche communities, creating a toxic environment for the residents and pollution.

73. The Special Rapporteur met with a number of Mapuche representatives, indigenous people who comprise 84 per cent of the indigenous population in the country. Their current housing conditions are directly related to having been expelled from and dispossessed of their traditional lands to make way for the government-sponsored forestry industry. Seventy-five per cent of indigenous peoples in Chile now live in urban centres.

74. In theory, indigenous peoples can avail themselves of the government homeownership subsidy programme in urban centres. However, there are a number of barriers to accessing the programme. For example, the subsidy requires proof of title to land, which as the government knows, is sometimes an impossible criterion for indigenous peoples. Moreover, the programme has not been adapted to the particular cultural needs of indigenous peoples.

75. While the Special Rapporteur did learn of two rural programmes to assist indigenous peoples (the "Rural liveability" and "Shaman" housing schemes), they are insufficient to meet the needs of indigenous rural dwellers. In particular, the dominance and prioritization of the forestry industry has resulted in a severe lack of access to on-site potable water for thousands of rural dwellers, who instead have water brought to them by trucks. During her visit to Temuco, the Special Rapporteur was informed that in the region of Araucania, more

[54] See www.indh.cl/indh-observa-desalojo-familias-migrantes-santiago-centro/

than 90,000 individuals, close to 10 per cent of the total population, receive water via trucks.

D. Women

76. In line with the 2009 report of the Inter-American Commission on Human Rights, the Special Rapporteur was disturbed to learn about the regime of administration of property during marriage and following its dissolution. The Commission noted that "the Civil Code provides that unless the parties contracting marriage expressly state otherwise, the husband shall be the head of the conjugal partnership and administer his and his wife's property. Furthermore, while a woman married in a conjugal partnership has the right to administer the property that she brings to the marriage and that she acquires, in order to retain these assets in the event of the dissolution of the conjugal partnership, she must waive her right to the community property."[55] While the Special Rapporteur understands there are other regulations that can mitigate the application of the Civil Code, she wishes to emphasize the situation of women who are either not informed of this provision, or who cannot afford the costs that would need to be incurred in order to make alternative marital arrangements. She was also informed that most Chilean couples still marry under this discriminatory regime, which stands in direct contradiction to articles 15 and 16 (h) of the Convention on the Elimination of All Forms of Discrimination against Women.

77. According to Law 20.066 on intra-family violence, the State is obliged to prevent, sanction and eradicate intra-family violence.[56] While situations of intra-family violence are often experienced by women of all ages, the law also protects children, older persons and persons with disabilities. The State is obliged to put in place a series of measures, including in relation to ensuring access to housing. One such measure has led to the creation of *casas de acogida*, or temporary shelters. Currently, there are 43 shelters in the country, 20 of which have been built since 2014, and 5 new ones are planned for 2018. The shelters welcome women aged 18 years old or older, from any region of the country, with or without children, who are living in a situation of violence or at risk of violence. Besides ensuring a place of residence and safety for women and their children, the shelters aim to promote coordination among various services — for example, legal aid and access to housing subsidies. Reportedly, they do not accommodate women with disabilities, a matter of special concern for the Special Rapporteur, although she was informed that there are ongoing negotiations between the national service for women and gender equality (Servicio Nacional de la Mujer y la Equidad de Género) and the national disability service (Servicio Nacional de la Discapacidad) to improve legal support to women with visual, hearing and cognitive disabilities.

V. Access to justice

78. The Constitution of Chile does not include the right to adequate housing and there is little constitutional jurisprudence and litigation directly relating to the right to housing. At the same time, the reform of article 5 of the Constitution (Law No. 18.825) recognizes that all rights included in treaties ratified by Chile must be promoted and respected by the State. As Chile has ratified the International Covenant on Economic, Social and Cultural Rights and other relevant treaties such as the Convention on the Rights of Persons with Disabilities, it has international obligations in relation to the right to adequate housing and to non-discrimination in that regard.

79. Economic and social rights remain subsidiary to civil and political rights in the legal landscape in Chile. However, the Special Rapporteur was pleased to learn of the establishment of the Office of the Under-Secretary for Human Rights within the Ministry of Justice and Human Rights and of the appointment of a first Under-Secretary in September

[55] Inter-American Commission on Human Rights, "Report on the rights of women in Chile: equality in the family, labour and political spheres" (2009), para. 63.

[56] See www.leychile.cl/Navegar?idNorma=242648.

2016.[57] A key role of this office, according to Law No. 20.885, is to develop, coordinate and monitor the implementation of the national human rights plan as an instrument to establish priorities for respecting, promoting and protecting human rights. The first national human rights plan was launched in December 2017 and included 15 key areas and over 600 actions in areas such as "territorial equity", economic, social and cultural rights, natural disasters, indigenous peoples, persons with disabilities, migrants and refugees. The plan also aims to ensure the engagement, follow-up and implementation of recommendations by international human rights mechanisms.

80. Some decisions taken by the higher courts in Chile have been based on the interdependence of rights, for example that the right to adequate housing is essential to guarantee the rights enumerated in the Constitution: the right to a family, to private life, to personal security, to health and to life. A decision by the Court of Appeals in Temuco, for instance, used a protection action to recognize the obligation of the State to develop public policies to guarantee access to housing, with priority given to vulnerable groups, regardless of income or access to economic resources.[58] While that kind of decision is relatively scarce, its dissemination, along with stronger capacity-building on economic, social and cultural rights among judges and lawyers, could play a role in enhancing access to justice for the right to adequate housing.

81. Unfortunately, other decisions are not so encouraging, especially when considering the pre-eminence of real estate without sufficient regulation. In August 2017, for example, an appellate court in Santiago rejected a protection action presented by a group of residents living in Estación Central, which aimed to stop the construction of two new "vertical ghettos" in the district, Gran Estación and Jardín Centro. The court decided that the prima facie risks were linked to the construction company, whereas that type of protection action can only be applicable if it is proven that the concerns, in their origin, are the direct result of actions or omissions by the municipal authorities. In its ruling, the court also stated that an order to suspend or paralyse the construction would only be accepted if the municipality had failed in its duties to supervise the construction, or if it had committed illegal acts.[59] The court, however, did recommend some measures for the supervision of the construction of residential projects, with a view to avoiding the negative impacts of large projects in terms of the environment and community life. That decision was later ratified by the Supreme Court.

82. The independent National Institute for Human Rights carries out important research on and promotion of economic, social and cultural rights, including the right to housing. The Institute has played a central role in the elaboration of reports, including in relation to post-disaster reconstruction, in the monitoring of and assistance to communities facing eviction and in litigation in relation to the right to adequate housing.

VI. Conclusions and recommendations

83. **Assessing the housing sector in Chile from a human rights perspective challenges several assumptions. On the one hand, its long-standing public subsidy programmes, which have enabled many low-income people to access housing with security of tenure, stand out as exceptional measures. Those programmes also demonstrate a commitment to ensuring the progressive realization of the right to adequate housing, in keeping with the International Covenant on Economic, Social and Cultural Rights. On the other hand, the legacy of deeply rooted and historic segregation and isolation on the outskirts of cities of the most marginalized segments of the population, with many living in low-quality units, requires immediate attention. A robust housing strategy, harnessing the country's maximum available resources,**

[57] See Law No. 20.885, 5 January 2016.

[58] See Court of Appeals, Temuco, *Figueroa Jara et al v. Desarrollos Comerciales S.A.*, rol No. 8828-2013 (21 July, 2014).

[59] See www.pjud.cl/documents/396729/0/EDIFICIOS+ESTACION+CENTRAL.pdf/12136b76-ed81-4c0b-a8b7-319d155a8e94.

with medium and long-term sustainable goals and monitoring, is required to address and prevent exclusion. Housing policy in Chile must ensure a coherent set of elements consistent with the right to housing, including ensuring access to basic services and that housing is adequately located. It must be embedded in and implemented consistently with the core principles of equality and non-discrimination.

84. **In 2015, the Committee on Economic, Social and Cultural Rights expressed concern about the realization of the right to housing in Chile, noting that despite the measures adopted to reduce the housing deficit, Chile still required a human rights-based, comprehensive social housing strategy, with the following features: (a) priority for the most marginalized segments of the population, such as those living in informal settlements, rural areas or inadequate conditions; (b) protection against forced evictions; (c) prohibition of segregation; and (d) allocation of adequate funding, with effective monitoring and accountability (E/C.12/CHL/CO/4). The Special Rapporteur reiterates those recommendations and urges all levels of government to implement them.**

85. **For decades the central Government has played a primarily financial role with respect to housing for low-income segments of the population. The Special Rapporteur notes that this role has evolved in recent years, with the central Government playing a more proactive role through a combination of subsidies and programmes with concrete targets and mechanisms. The Special Rapporteur encourages the State to adopt an even more active role in housing provision, particularly in combating homelessness, upgrading dilapidated housing and ensuring that vulnerable and marginalized groups are no longer segregated. Chile has the resources to do so and, based on the information received from the Government during her visit, the Special Rapporteur believes there is the political will to move towards the full realization of the right to housing.**

86. **The Special Rapporteur recommends the following specific actions and priorities to the central Government, to the regions and to municipalities, as appropriate:**

(a) **Continue the constitutional reform process to ensure it is consistent with the international human rights obligations and commitments that the State has undertaken. In doing so, ensure that an explicit reference to the right to adequate housing is included, along with the full range of economic, social and cultural rights, all of which should be made justiciable. The new constitution should recognize the multicultural nature of Chilean society and should explicitly recognize all indigenous peoples in Chile as a protected group with guaranteed rights;**

(b) **Ensure the implementation of housing as a human right in existing programmes, policies and plans, as well as in any legislation in keeping with the 2030 Agenda for Sustainable Development (particularly target 11.1) and the New Urban Agenda. Specifically, the central Government must aim to prevent, address and eliminate homelessness through the adoption of a strategy and regularize all informal settlements in keeping with those commitments;**

(c) **Review legislation, policies, programmes and regulations in all areas to ensure compliance with the requirements of the right to adequate housing for the most vulnerable, as articulated in international human rights law;**

(d) **Take immediate steps to address discrimination against and stigmatization of those living in *campamentos* or informal settlements and on the peripheries of cities, including through a more direct and consistent enforcement of anti-discrimination legislation in all housing domains, for example the rental sector. Public education campaigns geared towards clarifying the human rights obligations and responsibilities of public and private actors with respect to housing should also be undertaken;**

(e) **Continue to develop and strengthen a comprehensive approach to various housing tenure systems. Provide the necessary legal framework and ensure access to resources to allow access to different types of tenure beyond individual**

ownership, for example cooperative housing, land trusts and other community ownership models;

(f) Enhance efforts to diversify the housing model, by ensuring that housing production does not rely solely on private developers and households are not required to secure a mortgage. For example, efforts could be scaled up to make available to other levels of government land belonging to the central Government (for free or below market value) for the production of rental housing that is affordable for those in the lowest income brackets, youth, migrants and people who are homeless;

(g) Pay particular attention to geographic, social and cultural diversity, and enhance cultural adequacy, in particular with respect to the land and housing of indigenous peoples;

(h) Take immediate steps to reform the Civil Code with respect to the regime of administration of property during marriage and following its dissolution to ensure women's equality;

(i) Explicitly incorporate the right to adequate housing in the law on migrants, in keeping with binding international obligations, and ensure a clearer focus on the human rights of migrants, regardless of their legal status. Also incorporate, before adoption of the draft law, stronger mechanisms for monitoring and accountability;

(j) Modernize legislation regarding rental accommodation to better protect the rights of tenants and set in place adequate regulation for private landlords;

(k) Continue to take measures to ensure all informal settlements are regularized in situ in a timely manner. Governments must ensure that all alternatives to eviction, even from private lands, are explored. Evictions that are required to take place must be in strict compliance with international human rights law and must not result in homelessness;

(l) Housing conditions in informal settlements must continue to be addressed with priority and urgency, in order to comply with international human rights commitments. Basic services, including water, sanitation and electricity, must be provided to all communities on public land and all efforts should be made to regularize settlements in situ. Laws must be reformed to ensure that such services will be available to communities on private land until such time as those situations are resolved;

(m) Undertake additional efforts to combat economic segregation, which has manifested through housing location. In that context, higher-income districts should be required to make land available for social housing projects, with a view to enhancing social inclusion. National regulation and guidelines on urban planning, land use and zoning are needed, in particular to ensure better coordination between various levels of government, more accountability and less disparity in the decisions made, in particular with regard to social segregation. Participation in these processes at the local, regional and national levels should be ensured;

(n) Ensure the accountability of private actors with regard to their human rights obligations, in keeping with the report of the Special Rapporteur on adequate housing on the financialization of housing, including with respect to speculation over land and housing, land-grabbing, rentals and forced evictions in both urban and rural areas. Effective monitoring and accountability mechanisms in districts and municipalities should also be linked to construction permits and the allocation of land to real-estate developers;

(o) Ensure that the national action plan on business and human rights is made relevant and applied to the housing sector to include measures to regulate, for example, construction and real-estate developments, land use, rentals, utilities and public services;

(p) **Ensure that the newly adopted national plan on human rights is effectively implemented, especially with regard to the right to adequate housing and economic, social and cultural rights in general;**

(q) **Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**